

THE PROOF IS IN THE PERMIT

How to Make Sure a Facility in Your Community
Gets an Effective Title V Air Pollution Permit



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June 19, 2000

Introduction

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If you are like most people, you are unsure of how to find out whether an industrial facility that pollutes the air in your community (such as a factory, power plant, or municipal waste incinerator) is complying with the Clean Air Act. Air quality requirements are numerous and complex. What requirements apply to the facility that you are concerned about? How do you find out if the facility is obeying the requirements?

In 1990, the United States Congress passed a law that is designed to help you answer these questions. Created as part of the Clean Air Act Amendments of 1990, this law requires all large sources of air pollution and many smaller sources of hazardous air pollutants to obtain a federally-required permit that applies to the day-to-day operation of the facility. This new operating permit program provides members of the public with a way to protect local air quality by helping make sure that air pollution sources are following the law. The program is commonly referred to as “the Title V program” (with “V” pronounced as “five”) because the Clean Air Act Amendments of 1990 are organized into eleven “titles,” and the requirements for the program are found in Title V of the amendments.

This handbook will help you ensure that a Title V permit issued to a facility in your community is as protective of human health and the environment as possible.

How does a Title V permit help the public determine which requirements apply to a facility?

A Title V permit includes every “federally-enforceable” air pollution requirement that applies to a particular facility. A federally-enforceable requirement stems from the Clean Air Act and can be enforced by the United States Environmental Protection Agency (“U.S. EPA”) and by the public. This includes all federal and many state air quality laws that apply to a facility, since many state requirements merely implement the Clean Air Act. After a Title V permit is issued for a facility, a member of the public who wants to know which air pollution requirements apply to that facility can simply request to see the facility’s Title V permit.

How does Title V help the public know whether a facility is obeying applicable requirements?

Title V requires officials at a facility to:

- **Keep track of pollution levels and whether pollution control equipment is being operated and maintained properly.** Title V requires each facility to conduct regular “monitoring activities” such as performing stack tests and inspections, measuring raw materials and fuel consumption, and keeping records of facility operating conditions and equipment maintenance. These monitoring activities must be designed to provide the public with a reasonable assurance that the facility is complying with all legal requirements. Monitoring results must be reported to the Permitting Authority, which is typically the state environmental agency, at least once every six months.
- **Sign on the dotted line.** Every 12 months, an official at each facility must sign a statement certifying whether the facility is in compliance with its permit. This statement is called a “compliance certification.” The official may face a stiff fine--or even criminal charges--if he or she signs a false statement.
- **Inform the public.** Compliance certifications and monitoring reports must be sent to the Permitting Authority and then made available to the public.

A well-written permit makes it more likely that a facility that illegally pollutes the air will be caught. Even better, by alerting a facility to its Clean Air Act obligations, a well-written permit makes it less likely that the facility will violate requirements in the first place. The Clean Air Act allows members of the public and government regulators to take permit violators to court.

What are the characteristics of an effective Title V permit?

An effective Title V permit (1) clearly identifies the requirements that apply to the facility, (2) requires the facility to perform monitoring that assures the public that the facility is complying with permit conditions, and (3) provides the public with the ability to enforce permit conditions. If a permit is vague about what counts as a Clean Air Act violation, the public cannot rely upon the permit as an effective enforcement tool.


How can a member of the public participate in permit development?

The Clean Air Act provides extensive opportunities for the public to participate in the development of a Title V permit. Before a Permitting Authority can issue a final Title V permit to a facility, the Permitting Authority must release a draft permit for public review. In addition, the Permitting Authority must provide U.S. EPA with an opportunity to review and, if necessary, object to each proposed permit. Anyone who participates in the public comment period for a particular draft permit has the right to petition U.S. EPA to object to that permit. If U.S. EPA does not object to the permit, a petitioner has the right to take U.S. EPA to court for improperly denying the petition.

To help ensure that a particular facility receives an effective Title V permit, it is critical that you submit comments on the facility's draft permit during the public comment period. This handbook explains what to look for when you review a draft permit and how to shape your concerns into effective comments.

Why is it important to review and comment on a draft Title V permit?

If you have concerns about a facility, the importance of reviewing and commenting on the facility's draft Title V permit during the public comment period cannot be overstated. For a Title V permit to serve as an effective tool for enforcing Clean Air Act requirements, it must include all applicable requirements as well as sufficient pollution monitoring. In addition, a permit must be understandable by the public. If you participate in the public comment period for a draft permit, you can advocate for improvements in the draft permit. On the other hand, if you wait to get involved until after a final permit is issued, the only way to remedy a flaw in the permit is to convince the Permitting Authority to "reopen" the permit. Except in unusual circumstances, the Permitting Authority is unlikely to grant your request to reopen a permit, particularly when you had the opportunity to comment on the perceived flaw during the public comment period. Most likely, if you miss the public comment period you will have to wait until the permit is renewed (usually five years) to advocate for improvements.

 **Reopen:** Permitting Authorities reopen permits to add new terms and correct mistakes. When a permit is reopened, the changes in the permit are subject to a 30-day public comment period. See page 12.

Do I need to be a lawyer or an engineer to review a draft Title V permit?

No. You do not need to be a lawyer or an air pollution engineer to review a draft Title V permit. The most important qualification is a desire to protect and improve air quality in your community.

Is it possible to prevent a facility from being built by objecting to issuance of a Title V permit?

Generally, no. In most cases, a facility is already operating by the time it receives a Title V permit. This is because under federal law, a new facility is not required to apply for a Title V permit until after it has been operating for twelve months (state law might allow for less time).¹ This is in contrast to a pre-construction permit, which a facility must obtain before beginning construction.

If an existing facility is covered by the Title V program, the facility must obtain a Title V permit in order to continue operating. Keep in mind that the objective of a Title V permit is not to impose additional emission limits and standards upon a facility. Rather, the objective is to provide the public, the Permitting Authority, and the facility with a way to assure that the facility is complying with existing air quality requirements. Because a Title V permit typically does not place new emission limits on a facility, the vast majority of facilities should have no problem obtaining a Title V permit. (When developing a facility's draft Title V permit, the Permitting Authority may discover that certain air quality requirements that apply to the facility have been overlooked in the past. In that case, these additional requirements will be included in the facility's Title V permit). See page 84 for information about why a facility's application for a Title V permit might be denied.

How is this handbook organized?

Part One of this handbook explains how to review a Title V permit. Part Two covers "special topics" that provide more detail on a few important issues. Finally, reference materials are available in the appendices.

¹ An exception to this general rule occurs when a state merges its pre-construction permit program with its Title V program. Under a merged program, a facility must apply for a pre-construction/Title V permit prior to construction. Even so, issues that relate exclusively to the Title V portion of a merged permit are unlikely to hold up construction of a facility. This is because when problems arise that relate exclusively to the Title V portion of a merged permit, the Permitting Authority is usually allowed to go ahead and issue the pre-construction portion of the permit separately so that construction may begin.

Where can I locate the federal regulations that lay out the basic requirements of the Title V program?

The federal regulations that provide the basic requirements of the Title V program are found in 40 CFR Part 70, often referred to simply as “Part 70.” Though Part 70 was written by U.S. EPA and not Congress, Part 70 requirements have the force of law. Permitting authorities must comply with Part 70. Part 70 is included in Part 3, Appendix A of this handbook and is also available on the Internet at www.epa.gov/oar/oaqps/permits/requirem.html.

How do I obtain government documents that relate to a specific facility or Title V permit?

As you read this handbook, you will learn about a variety of government documents that you may want to obtain as you prepare to review a facility’s draft Title V permit. You may be able to obtain these documents by simply requesting them informally (by telephone or in person) from U.S. EPA or the Permitting Authority. If you are unsuccessful in obtaining government documents informally, you should file a formal written request under your state’s open records law. Chapter One in Part Two of this handbook offers detailed advice explaining how to submit such a request. If you ask for a document informally and are told that it does not exist, you may want to confirm this by submitting a formal open records request.

Terminology:

The terms “law,” “regulation,” “statute,” and “requirement” are used frequently in this handbook. Unless otherwise stated or made clear from context, the following definitions apply:

Law: the underlying source for any legally enforceable requirement. Can be a statute, regulation, administrative order, or judicial decree.

Statute: a law passed by the United States Congress, a state legislature, or a local government body.

Regulation: legal requirements developed by a state or federal government agency pursuant to powers delegated to the agency by a statute passed by elected representatives. Any valid regulation must have been subject to public notice and comment before final issuance.

Requirement: Any legally-enforceable condition that flows out of any provision of law.

Other terms are defined as necessary as they arise in the handbook.